



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 10215/24

In the matter between

ZUBEIDA MOHAMED NO

APPLICANT

AND

PAT VAN ROOYEN

1st RESPONDENT

**ALL OTHER PERSONS RESIDING WITH OR UNDER
CITY OF CAPE TOWN MUNICIPALITY**

2nd RESPONDENT

3rd RESPONDENT

Date of Hearing: 30 January 2025

Date of Judgment: 28 February 2025 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] This is an application for the eviction of the first respondent from immovable property in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998) (the PIE Act). The deceased and sister of the applicant was

the registered owner of the property. The deceased passed away on 2 March 2023, and the applicant was appointed the executrix of her estate. The applicant alleged that the immovable property vested in the estate. The first respondent opposed the application and alleged that he and his wife had bought the property from the deceased during her lifetime.

[2] The first respondent in his answer provided a signed deed of sale agreement, which showed the deceased as the seller and him and his wife as the purchasers of the property concluded on 12 September 2013. He also attached a signed power of attorney by the deceased which authorized attorneys, as her lawful agents, to pass the transfer of the property to the first respondent and his wife. In reply, all that the applicant said was that she had no knowledge of this alleged sale agreement. For purposes of this application, it is telling that the applicant did not take this court into her confidence and disclose when she became aware of the first respondent's alleged sale. The inescapable impression is that the applicant did not disclose this knowledge in her founding affidavit. If the applicant only knew in reply, she would have said so.

[3] The first respondent alleged that by 2013, the deceased was already not staying at the property for many years. At that time the deceased stayed with his mother-in-law. Another person, Joan, lived on the property and used it as a drug den. Joan was related to the deceased. The first respondent and his wife helped the deceased bury Joan in 2013. The first respondent's mother-in-law provided the deceased with shelter, whilst the first respondent and his wife took care of the subsistence and other personal needs of the deceased. I was contemporaneous with Joan's burial where the deceased offered to sell the property to the first respondent and his wife. The deceased indicated that she had not resided there for many years and did not imagine herself ever living there. They agreed on a purchase price of R183 000-00. They paid her R15 000-00 as part of the purchase price. Subsequently they paid her the purchase price. It was for that reason that when they signed the sale agreement, it stipulated in clause 4 that the purchase price was paid in full. After the deed of sale was signed, the first respondent and his wife moved into the property, which was in an uninhabitable state, and fixed it to make it habitable. The

deceased had signed everything to effect the transfer and registration of the property into the first respondent and his wife's names including the power of attorney. The first respondent and his wife struggled to raise the money to pay the conveyancers to effect the transfer, and that was the sole cause of the delay. The applicant's case in her founding affidavit was that the first respondent took occupation of the property approximately ten years ago. The deceased had told her that she had given the first respondent consent to reside in the property and that he paid rent in terms of a verbal agreement. This is hearsay, the probative value of which depended on the credibility of the deceased. In the light of the direct evidence of the first respondent, it seems that if proved, the first respondent may have a valid answer to the eviction application. In her reply the applicant said she had no knowledge of the first respondent's allegations relating to how he came to reside at the property including the circumstances around the alleged sale. If the allegations by the first respondent are correct, the version of the applicant that she had a good relationship with the deceased and that the deceased would have informed her if she had sold the property, cannot be correct. What is worrying about the applicant's approach, having regard to the rest of her replying affidavit, is that whilst aware of the first respondent's answer to her quest to evict his family from the property, she chose to come and present speculative opinions and arguments in an application to evict a family from its home.

[5] Section 4(1) of the PIE Act provides:

4 Eviction of unlawful occupiers

(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier."

To restate the obvious, the provision only applied to unlawful occupiers, not disputed occupiers of land. Where the issues in dispute between the parties, as in the present application, require considerations of other facts and law, including pieces of legislation like the Alienation of Land Act, 1981 (Act No. 68 of 1981) and the Administration of Estates Act, 1965 (Act No. 66 of 1965), for justice to prevail, an applicant cannot attempt to

circumvent the reality of facing a probable defence through a PIE application. A PIE application cannot be a tool to throttle an opponent to kill the life of its defence. I am persuaded that the applicant abused the process, as opposed to a genuine and honest advancement and protection of the interests of the estate.

[6] In the circumstance, I am not persuaded that the first respondent and his family were unlawful occupiers. For these reasons I make the following order:

The application is dismissed with costs, which costs are to be paid by the applicant personally.

DM THULARE
JUDGE OF THE HIGH COURT